

REMARKS

In the office action dated November 24, 2009, the examiner provisionally rejected claims 1, 15 and 22 on the ground of non-statutory obviousness-type double patenting over claims 1 and 23 of copending Application Serial No. 10/633,015 and rejected claims 1—35 under 35 USC 103 as unpatentable over Thomas (USP 7134130) in view of Johnson et al. (USPA 2004/0078806) and in further view of Hamzy et al. (USP 7490340) (hereinafter Thomas, Johnson and Hamzy). In view of the subsequent remarks, Applicants request reconsideration and withdrawal of the examiner's rejections.

Claim Rejection – Double Patenting

Applicants have filed a terminal disclaimer herewith. Examiner's double patenting rejection is moot as a result.

Claim Rejections – 35 USC 103

The examiner admits in the November 24, 2009 Office Action that Thomas and Johnson fail to disclose or provide a teaching of:

non-volatile memory configured for receiving a plurality of viewing profiles for selected viewers, wherein the plurality of viewing profiles include content-based specifications and wherein one or more of the plurality of viewing profiles include two or more time range specifications and different content-based specifications corresponding to each of the two or more time range specifications;

a signal impairment mechanism coupled to the second logic unit and configured for, based on the control signal, selectively passing a program signal there through without substantial impairment if the reference time falls outside of each of the two or more time range specifications corresponding to the active viewing profile or the content-based indicator does not exceed the content-based specification corresponding to one of the two or more of time range specifications of the active viewing profile within which the reference time falls or passing the program signal there through with substantial impairment if the content-based indicator exceeds the content-based specification corresponding to one of the two or more time range specifications of the active viewing profile within which the reference time falls within

as claimed in claim 1, or

selecting a viewer specification associated with the viewer indicator; the viewer specification including two or more content-based specifications associated and two or more time range specifications, wherein different content-based specifications correspond to each of the two or more time range specifications;

generating a control signal based on the comparison between the selected content-based specification and the received content-based indicator, wherein the control signal enables selectively passing a program signal without substantial impairment if the reference time falls outside of each of the two or more time range specifications corresponding to the selected

viewer specification or the content-based indicator does not exceed the content-based specification corresponding to the time range specifications reference time falls or passing the program signal with substantial impairment if the content-based indicator exceeds the content-based specification corresponding to the time range specification the reference time falls within

as claimed in claim 15, or

non-volatile memory configured for receiving a plurality of viewing profiles for selected viewers, wherein the plurality of viewing profiles include content-based specifications and wherein one or more of the plurality of viewing profiles include two or more time range specifications and different content-based specifications corresponding to each of the two or more time range specifications;

a signal impairment mechanism coupled to the logic unit and configured for, based on the control signal, selectively passing a program signal there through without substantial impairment if the reference time falls outside of each of the plurality of time range specifications corresponding to the active viewing profiles or the content-based indicator does not exceed the content-based specification corresponding to one of the plurality of time range specifications of the active viewing profile within which the reference time falls or passing the program signal there through with substantial impairment if the content-based indicator exceeds the content-based specification corresponding to one of the

plurality of time range specifications of the active viewing profile within which the reference time falls within as claimed in claim 22.

The examiner specifically states that:

"[I]t is noted that Thomas and Johnson fail to explicitly disclose different content-based specifications corresponding to each of the two or more time range specifications; selectively passing a program signal there through without substantial impairment if the reference time falls outside of each of the two or more time range specifications corresponding to the active viewing profile or the content-based indicator does not exceed the content-based specification corresponding to one of the two or more time range specifications of the active viewing profile within which the reference time falls, or passing the program signal there through with substantial impairment if the content-based indicator exceeds the content –based specifications corresponding to one of the two or more time range specifications of the active viewing profile within which the reference time falls within."

OA, p. 9-10. In an attempt to cure this deficiency, the examiner relies on Hamzy. Applicants respectfully traverse this rejection because Hamzy is not prior art and, even if considered prior art, Hamzy teaches away from the claimed invention and, thus, cannot be combined with other references to establish a prima facie case of obviousness.

A. **Hamzy is not prior art:** Hamzy is not prior art because Applicant, Polly Stecyk, conceived of the claimed invention prior to the filing date of Hamzy, and exercised reasonable diligence from just prior to the filing date of Hamzy through the filing date of the subject application. As explained in the 37 C.F.R. 1.131 Declaration of Polly Stecyk ("Stecyk Declaration"), dated September 30, 2009, prior to April 2003, Applicant conceived of the invention disclosed and claimed in the above-identified patent application as

evidenced by Exhibits A and B attached to the Stecyk Declaration. Stecyk Declaration ¶¶ 2 and 3. Exhibit A is a copy of a Mitsubishi Digital Electronics America (MDEA), Inc. Invention Disclosure Form filled out by the Applicant and submitted to her employer MDEA prior to April 2003. Exhibit B is a copy of an email and its attachment, DOCSOC1-#133791-v2-MDEA_-_53_-_Spec_for_Passive_Enforcement_Method_for_Media_Ratings.DOC, sent from the undersigned to Jim Hicks, an employee of MDEA, on March 30, 2003. The attachment is a copy of a draft of the subject application. Exhibits A and B describe the systems and methods disclosed and claimed in the above identified patent application.

According to Stecyk's Declaration, from just prior to April 23, 2003 until the above-identified patent application was filed on September 15, 2003, Applicant exercised reasonable diligence in reducing the claimed invention to practice. Stecyk Declaration ¶¶ 2—12. A draft of the above identified application was completed on or about March 30, 2003 and forwarded to the Applicant on April 1, 2003. Stecyk Declaration ¶¶ 3—4. During the period of April 1, 2003 through June 10, 2003, Applicant conducted a review of 33 page draft of the above identified application including 35 claims plus 6 sheets of drawings, which she completed on or about June 10, 2003. During this same period, Applicant was busy working on the user interface of a new product release of MDEA televisions and released three (3) versions of the user interface specification. Stecyk Declaration ¶¶ 5—6. The "exercise of reasonable diligence... does not require an inventor to devote his entire time

thereto, or to abandon his ordinary means of livelihood." *Courson v. O'Connor*, 227 F. 890, 894 (7th Cir. 1915). While attempting to meet critical deadlines at work, which according to the Courson court is reasonable for the applicant not to neglect, Ms. Stecyk conducted a review of a lengthy draft of the above identified application.

Between June 10, 2003 and July 23, 2003, Applicant received and reviewed a new draft of the above identified application. During this same time period, Applicant was away from work on vacation for two (2) weeks from June 28, 2003 to July 13, 2003. Stecyk Declaration ¶¶ 7—8. According to the court in *Reed v. Tornqvist*, it is not unreasonable for an inventor to delay completing a patent application until after a return from a vacation. *Reed v. Tornqvist*, 436 F.2d 501, 168 USPQ 462 (CCPA 1971).

On August 1, 2003, Applicant provided comments on a draft of the above identified application to the undersigned. Stecyk Declaration ¶9. During August 2003, the above identified application was revised and then finalized on August 28, 2003. Stecyk Declaration ¶ 10 and Declaration of Kenneth Roberts, ¶ 2, dated Dec. 21, 2009, filed herewith. On or about, August 28, 2003, Roberts made corrections to the above identified application as indicated in Stecyk's email to Roberts and conducted a final review of the application. Roberts Decl. ¶ 2.

On or about September 2, 2003, following the Labor Day holiday which fell on September 1, 2003, Roberts turned the file for the above identified application over to his assistant to prepare a declaration, a power of attorney and

an assignment for the above identified application. Between September 2, 2003 and September 5, 2003, Roberts reviewed the declaration, power of attorney and assignment. Roberts Decl. ¶ 3. On or about September 5, 2003, Roberts sent Hicks a letter that included a copy of the subject application along with a declaration for Stecyk's signature. Roberts Decl. ¶ 4; Stecyk Declaration ¶11. Stecyk signed and dated the declaration on September 9, 2003. Roberts Decl. ¶ 5; Stecyk Declaration ¶12. Allowing three days for delivery by mail, Roberts received Stecyk's executed declaration on or about September 12, 2003, which fell on a Friday. The above identified application was filed on September 15, 2003, which fell on the following Monday. Roberts Decl. ¶ 6; Stecyk Declaration ¶12.

The earliest effective filing date Hamzy is entitled to is April 23, 2003. As noted above and supported by the Stecyk and Roberts Declarations, Applicant clearly conceived of the claimed invention prior to Hamzy's earliest possible effective filing date, and exercised reasonable diligence from at least just prior to April 23, 2003 to the filing date of the subject application on September 15, 2003. Thus, Hamzy is not prior art to the claims of the subject application. Accordingly, Applicants respectfully request that the Examiner withdraw the § 103(a) rejection based on Hamzy.

B. Even If Considered Prior Art, Hamzy Teaches Away from the Claimed Invention:

The examiner recognizes that the existence of the rating limits and time limits are independent in Johnson. To cure this deficiency, the examiner turns to Hamzy noting that it "clearly recites the existing correlation between time ranges and rating limits..." Applicants note, however, that a reference must be considered for all that it teaches and not used selectively to meet the limitations of the claims while using the claims as a road map. A careful review of Hamzy clearly reveals that Hamzy describes a system in which censoring program viewing based on time and content is independent of censoring program viewing based on viewers and content and, thus, effectively teaches away from the claimed subject matter of censoring based on the combined and concurrent use of viewer, time and content parameters:

different content-based specifications corresponding to each of the two or more time range specifications;

...selectively passing a program signal there through without substantial impairment if the reference time falls outside of each of the plurality of time range specifications corresponding to the active viewing profiles or the content-based indicator does not exceed the content-based specification corresponding to one of the plurality of time range specifications of the active viewing profile within which the reference time falls or passing the program signal there through with substantial impairment if the content-based indicator exceeds the content-based specification corresponding to one of the plurality of time range specifications of the active viewing profile within which the reference time falls within.

as claimed in claim 1;

comparing a reference time with the two or more time
range specifications of the selected viewer specification
and a content-based specification associated with a time
range specification of the two or more time ranges
specifications that the reference time falls within with a
received content-based indicator;

as claimed in claim 15;

non-volatile memory configured for receiving a plurality of
viewing profiles for selected viewers, wherein the plurality of
viewing profiles include content-based specifications and wherein
one or more of the plurality of viewing profiles include two or
more time range specifications and different content-based
specifications corresponding to each of the two or more time range
specifications;

a signal impairment mechanism coupled to the logic unit
and configured for, based on the control signal, selectively passing
a program signal there through without substantial impairment if
the reference time falls outside of each of the plurality of time
range specifications corresponding to the active viewing profiles or
the content-based indicator does not exceed the content-based
specification corresponding to one of the plurality of time range
specifications of the active viewing profile within which the
reference time falls or passing the program signal there through

with substantial impairment if the content-based indicator exceeds the content-based specification corresponding to one of the plurality of time range specifications of the active viewing profile within which the reference time falls within as claimed in claim 22.

The examiner refers to Col. 4, lines 50-67, Col. 5 lines 1-2 and figure 2 of Hamzy as providing the teaching to meet the claimed subject matter. However, Hamzy reads at Col. 4, lines 50—Col. 5, line 25 as follows:

Window 200 includes two censorship type selections which are time censorship selection 210 and viewer censorship selection 235. A user uses time censorship selection 210 when the user wishes to censor media signals based upon a time-of-day. For example, a parent may wish to configure a content receiver to show "TV-G" rated media signals while his children are awake, and show "TV-MA" rated media signals while his children are asleep. Time censorship selection 210 includes a first time range and a second time range. A user enters a first time range in text box 215 and enters a corresponding censorship level in text box 220. The example in FIG. 2 shows that a user's first time range is from "6 AM-9 PM" and the corresponding censorship level is "TV-PG".

A user enters a second time range in text box 225 and enters a corresponding censorship level in text box 230. The example in FIG. 2 shows that a user's second time range is from "9 PM-6 AM" and the corresponding censorship level is "TV-MA". In one embodiment, a user may continue to add more time ranges in order to configure his time censorship selection in finer detail, such as on an hourly basis.

A user uses viewer censorship selection 235 when the user wishes to censor media signals based upon which viewer is watching a particular media signal. For example, a parent may configure a content receiver to show "TV-G" rated media signals to his five-year-old child and show "TV-PG" rated media signals to his teenager. The example in FIG. 2 shows censorship settings for three viewers. A user enters the name of a first viewer in text box 240 and enters the first viewer's corresponding

ensorship level in text box 245. The example in FIG. 2 shows that the first viewer is "Billy" and Billy's corresponding censorship level is "TV-G". A user enters the name of a second viewer in text box 250 and enters the second viewer's corresponding censorship level in text box 255. The example in FIG. 2 shows that the second viewer is "Sue" and Sue's corresponding censorship level is "TV-PG". A user enters the name of a third viewer in text box 260 and enters the third viewer's corresponding censorship level in text box 265. The example in FIG. 2 shows that the third viewer is "Tom" and Tom's corresponding censorship level is "TV-MA". In one embodiment, a user may continue to add more viewers in order to configure his viewer censorship selection corresponding to a particular number of people, such as the number of people in the user's family.

It is clear from this excerpt of Hamzy that the Hamzy system **provides two independent control schemes for censoring media signals**, one based on viewers and content being viewed by the viewers, and the other based on viewing time and content being viewed at that time. A user is able to **select either** control scheme based on the viewer or based on the viewing time, **but not both**. This **distinction** is confirmed by a review of Fig. 5, and the description of Fig. 5 at Col. 7, line 45—Col. 6, line 49 in Hamzy:

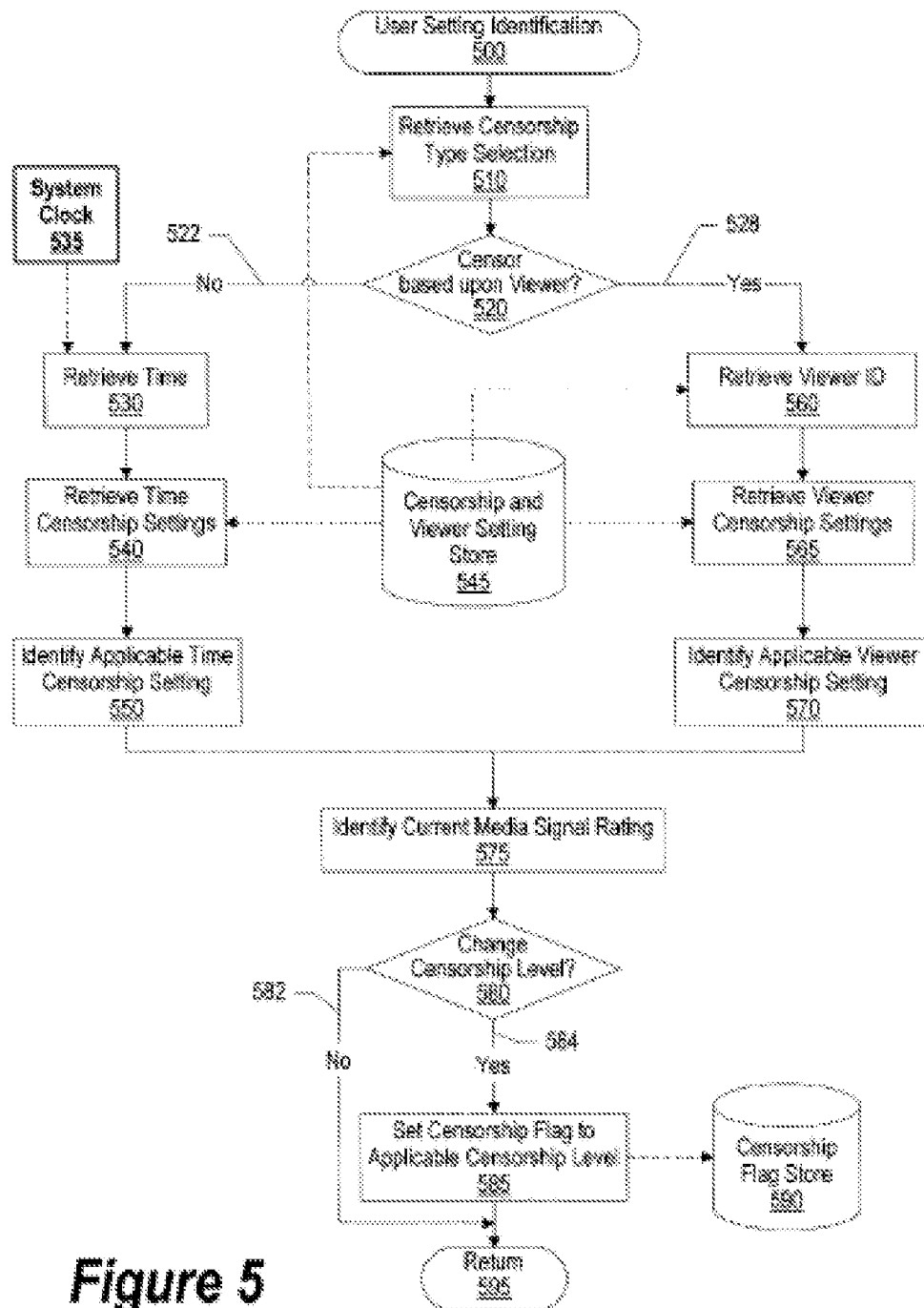
FIG. 5 is a flowchart showing steps taken in identifying an applicable censorship level using stored control settings. Processing commences at 500, whereupon processing retrieves a censorship type selection from data store 545 (step 510). **The censorship type selection was chosen by a user, such as a parent, and may be either a time censorship selection or a viewer censorship selection** (see FIG. 2 and corresponding text for further details regarding censorship type selection).

A determination is made using the censorship type selection as to whether to censor media signals based upon a viewer (i.e. viewer censorship selection) or based upon a time-of-day (time censorship selection) (decision 520). If processing should censor media signals based upon a time-of-day, decision 520 branches to "No" branch 522 whereupon

processing retrieves a current time from system clock 535 at step 530. System clock 535 is a device that is capable of tracking the time-of-day, such as a timer. Time information is also included with the media signal provided by a satellite or cable television provider.

Processing retrieves time censorship settings from data store 545 at step 540. The time censorship settings correspond to various blocks of time. For example, a parent may wish to configure a content receiver to show "TV-G" rated media signals while his children are awake, and show "TV-MA" rated media signals while his children are asleep (see FIG. 2 and corresponding text for further details regarding time censorship settings). Processing identifies an applicable censorship level using the time acquired from system clock 535 and the retrieved time censorship settings (step 550). Using the example described above, the time-of-day may be 9 PM and processing identifies that the applicable censorship level is "TV-MA".

Processing identifies a media signal's censorship rating at step 575. For example, a media signal may be a television program with a censorship rating of "TV-PG". A determination is made as to whether to change the censorship level of the media signal by comparing the media signal's censorship rating with the identified applicable censorship level (decision 580). If the media signal's censorship rating and the identified applicable censorship level are different,



decision 580 branches to "Yes" branch 584 whereupon processing sets a censorship flag at a level corresponding to the applicable censorship level, and stores the censorship flag value in censorship flag store 590 (step 585). For example, the censorship flag may have six levels wherein each level corresponds to each television rating level. On the other hand, if the media signal's censorship rating and the identified applicable censorship level are identical, decision 580 branches to "No" branch 582 bypassing censorship flag setting steps.

If processing should censor media signals based upon a viewer, decision 520 branches to "Yes" branch 528 whereupon processing retrieves a viewer identifier from data store 545 at step 560. Viewer identifiers are configured using a parental control user interface window and may have a corresponding personal identification number (PIN) that is used to authenticate the viewer. For example, the viewer may have used a remote control to select his name from a list of viewers and enter his PIN when he turns on the television.

Processing retrieves viewer censorship settings from data store 545 (step 565). The viewer censorship settings correspond to particular viewers. For example, a parent may wish to censor media signals at a "TV-G" rating for his five year old son "Billy", and censor media signals at a "TV-PG" rating for his teenage daughter "Sue" (see FIG. 2 and corresponding text for further details regarding viewer censorship settings). Processing identifies an applicable censorship level using the viewer identifier and the retrieved viewer censorship settings (step 570). Using the example described above, the viewer may be "Sue" and processing identifies the applicable censorship level is "TV-PG". Processing proceeds through decision 580 and step 585 as described above, and processing returns at 595.

Also, from col. 5, lines 26-30

The **user selects radio button** 270, 274, or 278 to instruct processing **as to what censorship type to use**. The user selects radio button 270 in order to instruct processing to use "time censorship". The user selects radio button 274 in order to instruct processing to use "viewer censorship".

Thus, Hamzy effectively teaches away from the claimed subject matter of censoring based on the combined and concurrent use of viewer, time and content parameters:

However, even if not considered to teach away from the claimed invention, the combination of Hamzy with Thomas and Johnson would require Hamzy to be modified to enable censorship based on the combination of viewer and viewing time, **two parameters that are clearly distinct and independent in Hamzy.** Such modification would, as a result, render Hamzy inoperable for its intended purpose of distinct and independent viewing control schemes based on viewer and time, **but not both**.. Accordingly, a prima facie case of obviousness cannot be based on Hamzy.

In view of the foregoing, Applicants respectfully submit that Thomas, Johnson and Hamzy cannot establish a prima facie case of obviousness for claims 1-35.

CONCLUSION

Applicants respectfully assert the application is in condition for allowance. Prompt and favorable action on the merits of the claims is earnestly solicited. Should the Examiner have any questions or comments, the undersigned can be reached at (949) 567-6700.

Respectfully submitted,
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